

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Performance Measurements and Standards)	CC Docket No. 01-318
for Unbundled Network Elements and)	
Interconnection)	
)	
Performance Measurements and Reporting)	
Requirements for Operations Support)	CC Docket No. 98-56
Systems, Interconnection, and Operator)	
Services and Directory Assistance)	
)	
Deployment of Wireline Services)	CC Docket No. 98-147
Offering Advanced Telecommunications)	
Capability)	
)	
Petition of Association for Local)	CC Docket Nos. 98-
Telecommunications Services for)	147, 96-98, 98-141
Declaratory Ruling)	

COMMENTS OF THE SMALL INDEPENDENT TELEPHONE COMPANIES

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Attachment A

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SUMMARY

The 33 small independent telephone companies listed in Attachment A (collectively, the "Small ITCs"), by their attorney, hereby submit these comments in response to the Notice of Proposed Rulemaking, FCC 01-331, released November 19, 2001, in the captioned proceeding. The Commission did not provide any evidence of complaints about unbundled network elements, collocation and interconnection provided by small incumbent local exchange carriers (ILECs). Indeed, most small ILECs do not provide services to competitive local exchange carriers due to the rural exemption in Section 251(f) of the Communications Act of 1934, as amended. Thus, there is no need for performance measurements, standards and reporting requirements for small ILECs.

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COMMENTS OF THE SMALL INDEPENDENT TELEPHONE COMPANIES

The 33 small independent telephone companies listed in Attachment A (collectively, the "Small ITCs"), by their attorney, hereby submit these comments in response to the Notice of Proposed Rulemaking, FCC 01-331, released November 19, 2001 (NPRM), in the captioned proceeding.¹ The Commission did not provide any evidence of complaints about unbundled network elements (UNEs), collocation and interconnection provided by small incumbent local exchange carriers (ILECs). Indeed, most

¹ Performance Measurements and Standards for Unbundled Network Elements and Interconnection, Notice of Proposed Rulemaking, CC Docket No. 01-318, FCC 01-331 (rel. Nov. 19, 2001) [hereinafter NPRM].

small ILECs do not provide these services, due to the rural exemption in Section 251(f) of the Communications Act of 1934, as amended (the Act). Thus, there is no need for performance measurements, standards and reporting requirements for small ILECs.

These issues are discussed below, using the order of topics in the NPRM.

BACKGROUND

The Small ITCs are small ILECs serving rural areas of Alabama, Colorado, Florida, Georgia, Idaho, Illinois, Kansas, Maine, Nebraska, New Hampshire, New York, Ohio, Oklahoma, Pennsylvania, South Dakota, Vermont, Virginia and Washington.

Each of the 33 Small ITCs qualifies for the rural exemption in Section 251(f) of the Act. None of the Small ITCs provides UNEs, collocation or other interconnection services to carrier-customers pursuant to Section 251(c) of the Act. None of the Small ITCs is subject to state-level regulations concerning UNEs, collocation and interconnection.

I. THE CLECS ARE NOT COMPLAINING ABOUT SMALL ILECS (NPRM Sec. II(A)-(C) Background)

The NPRM appears to be based solely on complaints by competitive local exchange carriers (CLECs). The Small ITCs do

not have CLEC customers because they are subject to the rural exemption in Section 251(f) of the Act.

Indeed, it is the large ILECs that are the focus of the CLECs' concerns about performance. For example, the large ILECs, not the Small ITCs, provide OSS functions to CLECs,² Bell Atlantic is the focus of the petition filed by the Association for Local Telecommunications Services,³ and the large ILECs provide the collocation to CLECs that is the subject of the Bell Companies' petitions for reconsideration noted by the Commission.⁴

In short, the NPRM proposes to impose regulations on small ILECs based on complaints by non-customers about other ILECs. Such regulations are not justified.

The Office of Management and Budget (OMB) has cautioned the Commission against adopting regulations without providing appropriate justification. The OMB's remarks were made in response to the Biennial Review Service Quality Reporting Requirements Notice.⁵ That Notice does not provide evidence of

² See NPRM para. 9.

³ Petition of Association for Local Telecommunications Services for Declaratory Ruling: Broadband Loop Provisioning, Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98-147, at 17-18, May 17, 2000 (available in Docket No. 01-321).

⁴ NPRM para. 12 & n.24.

⁵ 2000 Biennial Regulatory Review - Telecommunications Service Quality Reporting Requirements, Notice of Proposed

any complaints about the quality of service provided by small ILECs. Many of the Small ITCs filed comments in that proceeding, and showed that the proposed reporting requirements were unjustified and would be unduly burdensome.⁶ In response to those comments, the OMB stated:

The comments we received show a considerable cost for the reporting requirement, but do not include discussion of benefits. Absent a significant benefit being shown, we do not approve the extension in this proposal pursuant to the Paperwork Reduction Act.⁷

The same is true here. The Commission has not shown any benefit to imposing the proposed regulations on the small ILECs.

The Small ITCs respectfully request the Commission to heed the OMB's prior remarks about service quality reporting and exempt small ILECs from the proposed reporting requirements in this proceeding - because the Commission once again has not provided any justification for such regulations.

Rulemaking, CC Docket. No. 00-229, 15 FCC Rcd. 22,113 (2000).

⁶ E.g., Rural Local Exchange Carriers Comments, Docket No. 00-229 (dated Jan. 12, 2001); Bluestem Telephone Company, Chautauqua & Erie Telephone Corporation, GT Inc dba GT Com Inc, Sunflower Telephone Company, Inc. and Taconic Telephone Corporation Comments, Docket No. 00-229 (dated Jan. 12, 2001); Vermont ITCs Comments, Docket No. 00-229 (dated Jan. 12, 2001).

⁷ Letter from Edward Springer, OMB, to Judy Boley, FCC 1 (Jan. 29, 2001) (available in Docket No. 00-229).

II. BASE FORFEITURE AMOUNTS SET AT THE STATUTORY MAXIMUMS ARE UNREASONABLE FOR SMALL ILECS
(NPRM Sec. III(C) Enforcement)

The Commission proposes to establish base forfeiture amounts for violations of any measurements and standards that it adopts.⁸ As stated above, the Small ITCs oppose the adoption of performance measurements, standards and reporting requirements. Nevertheless, if we were to assume for the sake of argument that the Commission would adopt such regulations for small ILECs, any base forfeiture amounts should take into consideration the revenues of the small ILECs.

The Commission proposes to use as base forfeiture amounts the statutory maximum of \$120,000 for each violation, or each day of a continuing violation, up to a statutory maximum of \$1,200,000 for a single act.⁹ The Commission's justification, in part, is the fact that SBC had operating revenues of \$51.4 billion in 2000.¹⁰ The small ILECs' revenues are nowhere near that high. They tend to be between 1/10,000 and 1/100,000 of SBC's revenues.¹¹ Indeed, the maximum statutory forfeiture

⁸ NPRM para. 22.

⁹ Id. para. 22 & n.36.

¹⁰ Id. para. 22 n.35.

¹¹ For example, Laurel Highlands Telephone Company in Pennsylvania had operating revenues of about \$2.5 million in 1999. Laurel Highlands Telephone Company Financial Report for Twelve Months Ended December 31, 1999, Schedule A, at http://puc.paonline.com/FUS_Items/Quarterly_Reports/4thQtr/LAUREL1299.XLS. Many small ILECs in Alaska had operating revenues in

amount of \$1,200,000 exceeds the annual revenues for many small ILECs.¹² A forfeiture set to the statutory maximum could put a small ILEC out of business, thereby jeopardizing the availability of telephone service to the rural areas that it serves. Even though the Commission could consider a downward adjustment factor of "ability to pay," the small ILECs should not be required to expend resources to provide evidence of their limited revenues before addressing the merits of any proposed forfeiture. Instead, if the Commission were to adopt base forfeitures, it should differentiate between large and small ILECs, and adopt a much lower base forfeiture amount for small ILECs.

The base forfeiture could be proportional to the relative operating revenues of large and small ILECs. As noted above, a small ILEC's revenues tend to be between 1/10,000 and 1/100,000 of the revenues of SBC. Thus, a base forfeiture for a small ILEC could be set to an amount between 1/10,000 and 1/100,000 of the base forfeiture amount for large ILECs. A base forfeiture of \$120,000 for a large ILEC would therefore translate to a base forfeiture between \$12 and \$1 for a small ILEC.

1999 of just a few million dollars; for some, their gross operating revenues were a few hundred thousand dollars. See Telecommunications Utilities - Gross Operating Revenues, 2000 Annual Report, Regulatory Commission of Alaska, at http://www.state.ak.us/rca/annualreports/00annl_rpt/00V2P24.htm.

¹² See, e.g., Telecommunications Utilities - Gross Operating Revenues, 2000 Annual Report, Regulatory Commission of Alaska, at http://www.state.ak.us/rca/annualreports/00annl_rpt/00V2P24.htm.

In sum, if any base forfeiture were adopted for small ILECs, it should reflect the size of the small ILECs' revenues in comparison to the large ILECs' revenues.

III. THE COMMISSION SHOULD EXEMPT SMALL ILECS FROM ANY PERFORMANCE MEASUREMENTS AND STANDARDS
(NPRM Sec. III(D) Scope)

Implementation of the proposed performance measurements and standards would be unduly burdensome for small ILECs. For example, the cost for one ILEC to modify its internal procedures and its switch software could range from thousands of dollars to hundreds of thousands of dollars, depending on the size of the ILEC and the regulations that the FCC would adopt. This cost could readily exceed the annual revenues that a small ILEC would receive from UNEs, collocation and interconnection.

If the Commission were to impose this burden on the small ILECs, the Commission also should specify a method for recovering these costs. Perhaps the most straightforward cost recovery mechanism would be for the small ILECs to pass the cost of compliance onto the customers for the UNEs, collocation and interconnection services at issue in this proceeding. But this would result in raising the rates for customers that have not complained about the small ILECs' services. Worse yet, the small ILECs would need to divert resources to system upgrades to ensure compliance with the measurements, standards and related reporting requirements - rather than focusing on continuing to provide the

high quality services to their customers.

A solution to this conundrum is for the Commission to exempt small ILECs from performance regulations. Any regulations that the Commission adopts to resolve problems between CLECs and large ILECs should be imposed only on CLECs and large ILECs. The regulations should not be imposed on small ILECs which are not part of the problem to be resolved.

In sum, the proposed regulations could result in poorer service quality and higher prices for customers that have not complained about the small ILECs' service quality. This situation would be avoided if the Commission were to exempt small ILECs in the first instance.

IV. REPORTING REQUIREMENTS WOULD BE UNNECESSARY AND UNDULY BURDENSOME

(NPRM Sec. V(B) Reporting Procedures)

If the Commission were to exempt small ILECs from performance measurements and standards, the Commission also should exempt small ILECs from the consequent reporting requirements. The Commission recognizes that there is no need for reporting requirements if the services are of high quality and provided in a nondiscriminatory manner.¹³ The Commission has provided no evidence that the small ILECs are not meeting this benchmark right now. Thus, the Commission should not impose

¹³ NPRM para. 79.

regulations on the small ILECs in the first instance.

CONCLUSION

If it ain't broke, don't fix it. Small ILECs either do not provide the services that are the subject of this proceeding, or have not been subject to complaints about those services. Complaints by CLECs about services provided by large ILECs do not justify regulations for small ILECs - most of whom are subject to the rural exemption and do not currently provide UNES, collocation and other interconnection services to CLECs. The Small ITCs respectfully request the Commission to exempt small ILECs from any performance measurements, standards and reporting requirements.

Respectfully submitted,

**SMALL INDEPENDENT TELEPHONE
COMPANIES LISTED IN ATTACHMENT A**

By [filed via ECFS]
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January 22, 2002

ATTACHMENT A

SMALL INDEPENDENT TELEPHONE COMPANIES

Armour Independent Telephone Co.
Big Sandy Telecom Inc.
Bluestem Telephone Company
Bridgewater-Canistota Telephone Co.
Chautauqua & Erie Telephone Corporation
China Telephone Co.
Chouteau Telephone Company
Columbine Telecom Company
C-R Telephone Company
Ellensburg Telephone Company
Fremont Telecom
Great Plains Communications, Inc.
GTC Inc dba GT Com Inc.
K & M Telephone Company, Inc.
Kadoka Telephone Co.
Kennebec Telephone Company, Inc.
Maine Telephone Co.
Marianna & Scenery Hill Telephone Company
Northland Telephone Company of Maine, Inc.
Odin Telephone Exchange Inc.
Peoples Mutual Telephone Company
Sidney Telephone Company
Standish Telephone Co.
STE/NE Acquisition Corp. d/b/a Northland
Telephone Company of Vermont
The Columbus Grove Telephone Company
Sunflower Telephone Company Inc. (Colorado)
Sunflower Telephone Company, Inc. (Kansas)
Taconic Telephone Corporation
The El Paso Telephone Company
The Orwell Telephone Company
Union Telephone Company of Hartford
Yates City Telephone Company
YCOM Networks, Inc.

CERTIFICATE OF SERVICE

I, Susan J. Bahr, Law Offices of Susan Bahr, PC, certify that on this 22nd day of January, 2002, I have sent a copy of the foregoing to the following:

Qualex International
Via email to qualexint@aol.com

[filed via ECFS]
Susan J. Bahr